IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

CRP.No. 2340 of 2001

AGAINST THE ORDER ON E.A.NO.242/2000 IN E.P.NO.174/96 IN OS.730/1993
OF THE PRINCIPAL SUB COURT,TRIVANDRUM

REVN. PETITIONERS: PETITIONERS: JUDGMENT DEBTORS:
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1. R.SANTHARAM, S/O.LATE SRI.R.RAJAPPAN, AGED 36, RESIDING AT T.C.13/221, THODIYIL HOUSE, PATTOOR, THIRUVANANTHAPURAM.

2. R.SETHURAMAN, S/O.LATE R.RAJAPPAN, AGED 47, RESIDING AT -DO- -DO-

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT: RESPONDENT:DECREE HOLDER:

STATE BANK OF TRAVANCORE, PUTHENCHANTHA BRANCH, M.G.ROAD, THIRUVANANTHAPURAM, REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.R.S.KALKURA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX (C.R.P.NO.2340/2001)

ANNEXURE A1: TRUE COPY OF THE TRANSCRIPT OF ACCOUNT OF THE PETITIONER.

//TRUE COPY//

AHZ/

K.T. SANKARAN, J.

C.R.P. NO. 2340 OF 2001 F

Dated this the 22nd day of August, 2007

O R D E R

Judgment debtors 1 and 2 in O.S.No.730 of 1993, on the file of the Principal Sub Court, Thiruvananthapuram are the revision petitioners. They challenge in this revision the order dated 19th January, 2001, in E.A.No.242 of 2000 in E.P.No.174 of 1996.

2. It is an admitted fact that a decree was passed in favour of the respondent Bank for realisation of a sum of Rs.3,33,540/- with 15.5% interest at quarterly rests from the date of suit till realisation with half the costs and for realisation of a sum of Rs.2,02,027/- with 15.5% interest at quarterly rests from the date of suit till realisation with half the costs. E.P.No.174 of 1996 was filed by the decree holder for realisation of the decree debt. The Execution Petition was filed on 1.7.1996 and the amount claimed therein was Rs.6,85,359/-.

3. The decree holder filed an application for attachment of the amount payable to the judgment debtors in L.A.R.No.130 of 1988, on the file of the Sub Court, Thiruvananthapuram. On 8.7.1996, the executing court passed an order for attachment. The attachment was effected. The amount was brought to the executing court. On 31.10.1997, a sum of

Rs.6,68,456/- was released to the decree holder Bank towards the decree debt, on the application submitted by the decree holder Bank.

4. The case of the judgment debtors is that they were not appearing before the executing court at the time when the application for attachment was filed and orders were passed thereon. It would appear that subsequently the dispute was referred to the Lok Adalath. The parties appeared before the Lok Adalath and, as agreed by them, an award was passed on 26.8.2000. It was agreed between the parties that towards full satisfaction of the decree, the judgment debtors would pay a sum of Rs.3,50,000/-, out of which, Rupees One lakh would be paid on or before 28.8.2000 and the balance would be paid on or before 10.10.2000. Default clause was also incorporated in the award. It is an admitted case that as per the award passed by the Lok Adalath, the judgment debtors paid Rs.3,50,000/-.

5. Subsequently, the judgment debtors filed E.A.No.242 of 2000 to set aside the compromise order dated 26.8.2000 and to direct the decree holder to refund a sum of Rs.3,14,297/-. According to the judgment debtors, the amount claimed by them in the application represents an amount unlawfully collected by the decree holder from them. In the affidavit accompanying the application, it is stated that the compromise

order was passed by fraud practiced by the respondent Bank. It is alleged that the respondent miscalculated the amounts and manipulated the accounts. E.A.No.242 of 2000 was opposed and contested by the respondent Bank.

6. The Court below passed the impugned order directing the respondent/decree holder to refund Rs.1,01,276/- to the judgment debtors with interest at 15.5% from the date of the order. It is submitted by the counsel for the respondent that the order passed by the court below has been complied with.

7. Learned counsel for the petitioners submitted that the total amount claimed in the Execution Petition was Rs.6,85,359/-. Towards the decree amount, a sum of Rs.6,68,456/- was realised by attachment of the award amount in L.A.R.No.130 of 1988. The counsel submits that at the time when settlement was arrived at before the Adalath, the Bank was not entitled to realise a sum of Rs.3,50,000/-. In fact, the Bank claimed an amount of Rs.4,17.080/- at the time when the matter was referred to the Adalath. As per the compromise talks, the judgment debtors agreed to the figure of Rs.3,50,000/- under the belief that they were liable to pay more than Rs.4 lakhs. Actually, such amount was not due from the judgment debtors at that point of time and they were misled to enter into the

compromise agreeing to pay Rs.3,50,000/-.

8. Whatever may be the reason or whatever may be the ground on which the compromise was entered into, the fact remains that as on 26.8.2000, the judgment debtors were not liable to pay a sum of Rs.3,50,000/-. This is admitted by the Bank as revealed from the statement filed by them before the executing court in the present proceedings. The court below relied on the statement filed by the Bank and passed the impugned order directing the decree holder to refund a sum of Rs.1,01,276/-.

9. In this Civil Revision Petition, as directed by this court, I.A.No.669 of 2005 was filed by the Bank to accept the “transcript of account”. I.A.No.669 of 2005 is hereby allowed without pronouncing upon anything on the correctness of the statement. As per the transcript of account, the amount liable to be refunded, according to the Bank, was Rs.1,14,832/-.

10. It is clear from the statement filed by the Bank before the executing court and the transcript of account produced before this Court that there is dispute between the parties regarding actual amount to be refunded. On the basis of the transcript of account produced before this Court, the order passed by the court below cannot be sustained. I am of

the view that a fresh look into the matter is absolutely essential in view of the dispute involved in the case. It is also desirable that the parties are referred to the Lok Adalath by the executing court so that they could enter into a meaningful discussion and arrive at a reasonable compromise.

11. Accordingly, the order impugned is set aside and E.A.No.242 of 2000 is remitted to the executing court for fresh disposal. The executing court shall, if both the parties agree, refer the case to the Lok Adalath for settlement. In the nature of the dispute involved, I hope the parties would have a meaningful discussion in a congenial atmosphere and settle the disputes and differences amicably for ever. Registry shall forward a copy of the transcript of account produced by the decree holder Bank in I.A.No.669 of 2005, to the court below.

Parties shall appear before the court below on 24.9.2007.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO.2340 OF 2001 F

O R D E R

22nd August, 2007